IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.531 OF 2003

Shri Milind M. Merchande Applicant

Vs.

M/s.Reliance Builders Respondent

Mr.A.B.Vagyani i/b. Mr.S.R.Borulkar for applicant.
Mr.R.M.Pandey for respondent.

CORAM: B.H.MARLAPALLE,J.
August 09, 2005.

ORAL ORDER:

1. Heard Mr.Vagyani holding for Mr.Borulkar, the learned Advocate for the revision applicant-original defendant. Rule. Mr.Pandey waives service for the respondent-plaintiff. Rule is made returnable forthwith by consent of the parties.

2. Pursuant to the order passed by this Court on 9-12-2004 the execution of the decree passed by the trial Court was suspended on the condition of deposit of Rs.50,000/- and the record shows that the said amount has been deposited by the defendant with the Registry of this Court on 31-1-2005.

3. The decree passed by the trial Court was sought to be challenged by filing an appeal belatedly and, therefore, Misc. Application No.185 of 2002 was

filed praying for condonation of delay of 126 days. The said application has been dismissed by the impugned order dated 18-9-2003 passed by the III Additional District Judge, Thane.

4. In the application for condonation of delay the defendant had stated that though the trial Court had rendered its judgment on 25-1-2002, the decree was passed on 12-6-2002. The defendant had applied for certified copy on 6-2-2002 and it was made ready and delivered to him on 24-6-2002 and accordingly the limitation period would expire only on 12-7-2002. As against this the appeal was sought to be filed on 16-11-2003, thus beyond limitation of about four months i.e. 126 days. It was further stated that the delay was on account of financial stress of the power of attorney holder and due to the ill health of his father who was at his native place and, therefore, the power of attorney holder had to visit his village. The plaintiff-decree holder had filed their say opposing this application and stating that sufficient reasons were not made out to condone the delay. By the decree sought to be appealed against, the defendant was called upon to hand over the possession of the suit premises i.e. a flat and,

therefore, the remedy of appeal available under a statute need not be defeated only on the ground of delay which is about 126 days. It is not that the appellant had not furnished any reasons for condonation of delay. This would be a fit case to condone the delay by levying costs.

5. In the premises, this revision application succeeds and the same is hereby allowed. The impugned order dated 18-9-2003 is hereby quashed and set aside and M.A. No.185 of 2002 stands allowed and the delay of 126 days in filing the appeal is hereby condoned. The appeal to be registered and proceeded for expeditious hearing but subject to the payment of costs quantified at Rs.2000/-. Costs to be remitted to the Maharashtra State Legal Services Authority. Writ to go to the lower Court only after the cost is remitted.

6. The amount of Rs.50,000/- deposited in this Court will be transferred to the trial Court.

(B.H.MARLAPALLE,J.)